

**CGK FOUNDATION GRANT AGREEMENT**  
to help support the  
**The Clemson Institute for the Study of Capitalism**

THIS AGREEMENT (the "Agreement") is made effective as of this \_\_\_ day of September, 2009 (the "Effective Date") by and between the CHARLES G. KOCH CHARITABLE FOUNDATION, a Kansas nonprofit corporation (hereinafter "CGK Foundation"), and Clemson University (hereinafter "University"), for and on behalf of its College of Business and Behavioral Science and The Clemson Institute for the Study of Capitalism (hereinafter referred to as "CISC"). CGK Foundation and University are sometimes referred to herein individually as a "Party" and collectively as "Parties".

**RECITALS**

WHEREAS, CGK Foundation is a private foundation that is exempt from Federal income taxation under section 501(c)(3) of the Internal Revenue Code (the "Code").

WHEREAS, University and CGK Foundation desire to support and expand the research and teaching efforts relating to CISC and to strengthen and extend efforts related to the research, publication, dissemination, teaching, and continued academic and public use of the CISC and to support research into the causes, measurement, impact, and appreciation of economic freedom;

WHEREAS, CGK Foundation desires to make a grant to the University to support the Objective and Purposes described in Section 1 below; and

WHEREAS, University agrees to accept the grant subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual promises and agreements exchanged hereto, the Parties agree as follows:

**I. Objectives and Purposes**

(a) The University, within its College of Business and Behavioral Science, has established CISC. The primary objectives and purposes of CISC are to advance the understanding and practice of those free voluntary processes and principles that promote social progress, human well-being, individual freedom, opportunity and prosperity based on the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions and social norms upon which they rely. It is the Parties' intention that the objectives and purposes of CISC will be further advanced by CGK Foundation's provisioning of funds to recruit and hire two faculty positions (hereinafter referred to as the "Donor Supported Faculty Positions") at CISC to help strengthen this foundation and extend efforts related to research, publication, dissemination, teaching, and continued academic and public use of the CISC and

support the research into the causes, measurements, impact, and appreciation of economic freedom.

(b) It is understood that effective achievement of the Objectives and Purposes stated in Section I (a) requires a concentration of complementary and cooperative talents and skills, and that University will make every reasonable effort to recruit and maintain faculty and individuals in the Donor Supported Faculty Positions outlined in this Agreement:

- (i) who support the Objectives and Purposes in Section I (a) above,
- (ii) who have demonstrated or show the promise of working collaboratively and effectively to advance the Objectives and Purposes, and
- (iii) whose research promises to advance complement, inform and build upon University's existing strengths in business, finance, economics, institutions, and property rights and CISC's commitment to study the foundations of prosperity, social progress and human well-being.

Nothing contained herein shall be construed to restrict the academic freedom of the institution or faculty with respect to the activities of the CISC.

## **II. Donor Supported Faculty Positions**

(a) Donor Supported Faculty Positions. Subject to the terms and conditions set forth in this Agreement, the hiring of the Donor Supported Professorship Positions will be a supported by a grant from CGK Foundation as set forth in Sections IV and V. One of the Donor Supported Professorship Positions shall be an individual that will begin with the rank of a fulltime tenure track faculty professor in the College of Business and Behavioral Science or another University unit as may be determined by the CISC and the agreement of the tenuring unit. The second Donor Supported Professorship Position shall be fulltime visiting faculty lecturer in the College of Business and Behavioral Science.

(b) University agrees to recruit individuals for these two Donor Supported Faculty Positions who

- (i) support the Objectives and Purposes set forth in Section I (a) above,
- (ii) demonstrate the ability to work collaboratively and effectively toward those Objectives and Purposes, and
- (iii) conduct research that advances the Objectives and Purposes as well as complements, informs, and builds upon the University's existing strengths in the study of capitalism and its ties to prosperity, social progress, and human well-being.

(c) Prior to the extension of any offer for the Donor Supported Professorship Positions, Dr. C. Bradley Thompson shall present the candidate's credentials to CGK Foundation.

(d) No funding for a Donor Supported Professorship Position will be provided by the CGK Foundation without the approval of Dr. C. Bradley Thompson and the Dean of the College of Business and Behavioral Science.

(e) The Donor Supported Faculty Positions will be recruited and hired in a manner consistent with both the University Faculty Handbook and CGK Foundation's intent to support the CISC.

(f) University agrees that the individuals holding the Donor Supported Faculty Positions will have the same rights as all other University faculty members as set forth in the University Faculty Handbook.

(g) University agrees to assume continued funding for the tenure-track Donor Supported Faculty Position once CGK Foundation's funding obligations under this Agreement expire, if the performance of the faculty member holding the tenure-track position has been rated "very good" or "excellent" each year.

(h) Notwithstanding other qualifications, an individual who is a "disqualified person" as to CGK Foundation as that term is defined under Section 4946(a)(1) of the Code is not eligible to hold the Donor Supported Professorship Position, without CGK Foundation's prior written consent.

(i) The selection process outlined above for the Donor Supported Professorship Positions will exist for a term of six years (the "Term"). In the event that any of the Donor Supported Professorship Positions become vacant for any reason during the Term, a new candidate will be selected for the vacant position in accordance with the procedure set forth in this Agreement.

(k) The Donor Supported Professorship Positions shall each be publicly referred to as the "Charles G. Koch Scholar at the Clemson Institute for the Study of Capitalism." Such naming designation shall be used for a period of seven (7) years beginning with the hiring date of the first of the Donor Supported Professorship Positions (the "Hiring Date"); provided however, that if the University is able to secure full funding from another donor for the Donor Supported Professorship Positions for the period of time beginning on the first day of the sixth year from the Hiring Date and ending on the last day of the seventh year from the Hiring Date, the University, in its sole and absolute discretion, shall no longer be required to use the above-mentioned naming designation for the Donor Supported Professorship Positions beginning on the first day of the sixth year from the Hiring Date.

### **III. Performance Obligations**

(a) Faculty Performance Obligations. Individuals holding the Donor Supported Faculty Positions agree to support the Objectives and Purposes as set forth in Section I (a) above and to conduct scholarly research and teaching as appropriate for the faculty rank.

(b) Dissemination. The scholarly work of the Donor Provided Faculty Positions will be disseminated through research, teaching, special speaking engagements, publishing (both print and electronic media) and other means as may reasonably be deemed to comport with the mission of University and CISC.

(c) Reporting. On or before the conclusion of each academic year, University shall provide CGK Foundation with a summary of the principal activities and accomplishments of the Donor Supported Faculty Positions during the academic year, including information on

publications, presentations, courses taught, students supervised, and outreach activities, and such other information as CGK Foundation may reasonably request. The report will also include information about how those activities have advanced the Objectives and Purposes set forth in Section I (a) above, and about plans for the subsequent academic year.

(d) Reviews. Individuals holding the Donor Supported Faculty Positions will be subject to all existing department policies regarding performance reviews. In addition, they will have included in the services component of their annual review by the department an evaluation of their performance at advancing the Objectives and Purposes set forth in Section I (a) above, including research and scholarly activities related to such purposes.

#### **IV. Contribution and Purpose**

CGK Foundation agrees to contribute funds for the support of the Donor Supported Professorship Positions to be funded in the amounts set forth in Section V.

<u>CISC/Donor Supported Professorship Positions</u>	<u>Maximum Amount to be Contributed by CGK Foundation in Accordance with Section IV</u>
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One Fulltime Tenure Track Faculty Position and one Fulltime Research Visiting Lecturer	\$1,000,000
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The amounts to be contributed by CGK Foundation (the "Contributed Amounts") shall be made in such amounts and at such times as set forth in Section V below, and will be used solely for the purpose of paying the salary, fringe benefits, and employee related expenses for four (4) years for the Donor Supported Professorship Positions, except as otherwise provided for herein. In no event shall the aggregate amount to be paid by CGK Foundation exceed \$1,000,000.

University agrees to establish a segregated and restricted fund to be held and managed by the Clemson University Foundation (CUF), a public charity that exists for the sole benefit of Clemson University. This account, reflected on the books and records of CUF and Clemson University, will be called "Clemson Institute for the Study of Capitalism" (the "Fund"). Expenditures will be initiated by the Director of CISC, subject to approval by the Dean of the Clemson University College of Business and Behavioral Science. The Fund will receive all contributions made pursuant to this Agreement.

#### **V. Schedule and Form of Contribution**

CGK Foundation agrees to contribute to the University and the University agrees to accept the amounts contributed solely for the purpose of supporting CISC and the Donor Supported Professorship Positions in accordance with this Agreement and the following schedule subject to the procedures set forth below:

\$250,000 on or before September 30, 2009  
\$250,000 on or before June 30, 2010  
\$250,000 on or before June 30, 2011  
\$250,000 on or before June 30, 2012

Except with respect to the first contribution, on or before April 1st of each year set forth above, University shall submit a written proposal to CGK Foundation for CGK Foundation's approval (referred to as the "University Gift Request") of the projected annual expenses for the Donor Supported Professorship Position(s) expected to be hired (or projected annual expenses for the existing individuals holding the Donor Supported Professorship Positions) by the University. CGK Foundation may in its discretion accelerate payments of any installment of the contribution. For the amount to be contributed on or before September 30, 2009, the University shall submit the University Gift Request on or before September 25, 2009. In the event that the Donor Supported Professorship Positions do not begin providing services to the University in accordance with this Agreement by September 1, 2009, University agrees to hold in abeyance in the Fund any amount contributed by CGK Foundation until the earlier to occur: (i) the date on which a Donor Supported Professorship Position(s) begins providing services to the University as described herein or (ii) the date on which CGK Foundation approves the expenditure of funds contributed. CGK Foundation, in its sole and absolute discretion, shall not be obligated to contribute any additional amounts if the Donor Supported Professorship Positions are not filled by July 1, 2010 and all unexpended amounts contributed by CGK Foundation will be returned to CGK Foundation. (A similar process will govern the contribution (and return of contributions) schedule if the Donor Supported Professorship Positions do not provide services as contemplated herein for any subsequent year in accordance with the University Gift Request, except that the reference to September 1st shall be substituted with July 1st.)

Subject to the foregoing, in support of its mission, CISC may use any funds remaining from the Contributed Amount corresponding with the University's annual University Gift Request after providing from the Contributed Amount the corresponding annual salary and fringe benefits associated with the Donor Provided Professorship Positions. The CISC shall provide CGK Foundation with an annual accounting of the expenditure of funds received from CGK Foundation.

#### **VI. Administration and Miscellaneous**

A. University represents and warrants that (a) it is an organization described under Code section 170(c)(1) and agrees to immediately notify CGK Foundation if such tax status changes and (b) that all Contributed Amounts will be used exclusively for charitable and educational purposes within the meaning of Code section 501(c)(3). If University's tax status changes, CGK Foundation shall not be obligated to make any additional contributions unless it obtains an opinion from legal counsel that making such additional contributions does not adversely affect CGK Foundation's Code 501(c)(3) status or result in an excise tax under Chapter 42 of the Code.

B. Right to Modify or Revoke. CGK Foundation reserves the right to discontinue or withhold any amount of funding to be made under this Agreement if, in CGK Foundation's reasonable discretion, (a) University has not fully complied with the terms and conditions of this Agreement; (b) the Donor Supported Faculty Positions are not advancing the Purposes and Objectives set forth in Section I (a) above; or (c) such action is necessary to comply with any law or regulation applicable to University or CGK Foundation. University reserves the right to discontinue this Agreement if the CISC is unable to secure faculty who agree to advance the

Purposes and Objectives set forth in Section 1 (a) above and shall return any unspent funds at that time.

C. Reporting. In addition to any reporting requirements required by the individuals holding the Donor Supported Faculty Positions, University shall keep a record of all receipts and expenditures relating to funds provided by CGK Foundation and to provide CGK Foundation with such written reports and other information reasonably requested by CGK Foundation as necessary to describe the progress of the Donor Supported Professorship Positions.

D. Publicity. University will allow CGK Foundation to review and approve the text of any proposed publicity which includes mention of CGK Foundation or the Contributed Amount. With prior approval by University's news services department, University agrees to allow CGK Foundation to include information regarding the Donor Supported Faculty Positions, the Contributed Amount, and any information or materials about University and its activities in CGK Foundation's reports, newsletters, and news releases.

E. Confidentiality. To the extent permitted by South Carolina law, University will not use, disseminate or any way disclose confidential information obtained by or provided to University by CGK Foundation. For purposes of this Section, confidential information will include all information reasonable considered by the Parties to be confidential to one another including but not limited to research, financial strategies, correspondence, minutes, intellectual property, programs and other similar information. Notwithstanding the above, confidential information will not include such information CGK Foundation is required to make available for public inspection including a copy of its annual returns (Form 990-PF), its exemption application (Form 1023) and any documents issued by the IRS concerning the application.

F. Miscellaneous. University may not transfer or assign its rights or obligations under this Agreement to any person without the express written consent of CGK Foundation.

G. Modifications, alternations or amendments to this Agreement may be requested by the Parties, as needed, to meet the expressed intent of the contribution. Any proposed modifications, alternations or amendments must be in writing and agreed to by all Parties to this Agreement.

H. University agrees to provide CGK Foundation with immediate written notification of (a) any changes in the University's status as an organization described under Code section 170(c)(1); (b) University's inability to expend the Contributed Amount(s) for the Objectives and Purposes set forth in Section 1(a) above; or (c) any expenditure from a Contributed Amount made for any purpose other than those set forth in this Agreement.

I. The Parties agree and acknowledge that the funding commitment made by CGK Foundation under this Agreement is subject to the satisfaction of the terms and conditions set forth in this Agreement and that a breach by University of any commitment, agreement, obligation, covenant, representation or warranty, made or required under this Agreement shall give CGK Foundation the ability to terminate this Agreement. Such termination shall be deemed effective upon the expiration of said fifteen (15) days from the date notice was provided by CGK Foundation to University, if University has not therefore corrected the events of default or performed the acts described in the notice. During the pendency of this 15-day period, CGK

Foundation will not be obligated to contribute any funds pursuant to this Agreement and University will suspend any further payments pending the corrective action by the University. In the event of termination of this Agreement, notwithstanding any contrary provision herein, CGK Foundation shall have the right to require that all unexpended Contributed Amounts be returned to CGK Foundation.

J. Expenditure Limitation of the Contributed Amount. The Contributed Amounts are to be used solely for the purposes set forth in this Agreement and may not be expended for any other purpose without CGK Foundation's prior written approval. Notwithstanding any contrary provision herein, any portion of the Contributed Amount unexpended two years after the date will be returned immediately to CGK Foundation.

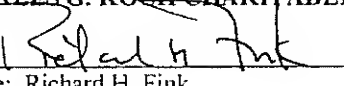
K. Required Notification. In the event that the Contributed Amounts cannot be used as provided for in this Agreement or the circumstances have changed sufficiently to make it impractical to continue using the amounts contributed for the purposes described herein, the unexpended Contributed Amounts may be used for another purpose consistent with and subject to this Agreement, provided CGK Foundation approves such other use(s) in writing. If CGK Foundation fails to approve such other use, University agrees to return the unexpended Contributed Amount to CGK Foundation and CGK Foundation shall have no further obligations under this Agreement.


L. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement or direction. Copies of signatures (whether facsimile or other electronic transmission) to this Agreement shall be deemed to be originals and may be relied upon to the same extent as the originals.

M. This Agreement sets forth the entire understanding of the Parties relating to the subject matter hereof and supersede all prior agreements and understandings among or between any of the Parties relating to the subject matter hereof


IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

**CHARLES G. KOCH CHARITABLE FOUNDATION**

By:   
Name: Richard H. Fink  
Title: President  
Date: 10/20/09



**CLEMSON UNIVERSITY**

By:   
Name: Doris Helms  
Title: Provost  
Date: